

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4 UNITED STATES OF AMERICA,)

5 Plaintiff,)

Case No. 3:15-cr-00438-JO-1

6 v.)

7 January 7, 2016

8 WINSTON SHROUT,)

9 Defendant.)

Portland, Oregon

10 FIRST APPEARANCE

11 FTR-RECORDED PROCEEDINGS

12 TRANSCRIPT OF PROCEEDINGS

13 BEFORE THE HONORABLE JOHN V. ACOSTA

14 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

15

APPEARANCES

FOR THE PLAINTIFF:

STUART A. WEXLER
Department of Justice
Tax Division
601 D Street NW
Washington, DC 20004

FOR THE DEFENDANT:

RUBEN L. INIGUEZ
Federal Public Defender's Office
101 SW Main Street
Suite 1700
Portland, OR 97204

TRANSCRIPT OF PROCEEDINGS

(In open court:)

THE COURT: Mr. Iniguez, are you ready?

MR. INIGUEZ: Yes, Your Honor.

THE COURT: Thank you. Mr. Wexler, go ahead, please.

MR. WEXLER: Good afternoon, Your Honor.

Stewart Wexler of the United States Department of Justice Tax Division, appearing for the United States, in the matter of United States of America v. Winston Shrout. Case number 3:15-cr-438, assigned to Judge Jones. We are here for the initial appearance and arraignment on a six-count indictment alleging with each count a willful failure to file a tax return.

The defendant is present and not in custody, appearing on a summons. It is my understanding he has not retained counsel, but Mr. Iniguez of the Federal Defender's Office is present.

THE COURT: All right. Thank you. Mr. Iniguez?

MR. INIGUEZ: Good afternoon, Your Honor. Ruben Iniguez appearing. Your Honor, my understanding is that Mr. Shrout did receive a summons to appear. He obviously is appearing before the Court pursuant to that summons. I did receive, you know, via CM/ECF, a copy of this six-count indictment, charging six misdemeanor counts, as Mr. Wexler just indicated. I've had an opportunity to review it. I did not have an opportunity to review it personally with Mr. Shrout;

1 however, I believe he has reviewed it himself having previously
2 received it.

3 I had an opportunity to speak with him briefly before
4 court, and he clearly does not want this Court to appoint
5 counsel to represent him in this matter. He's allowing me to
6 stand here, as he knows it's my job, but he made very clear to
7 me, and I think he will tell the Court in a second, that he
8 does not want counsel appointed to represent him in this
9 matter, nor do I believe does he intend to represent himself,
10 as he understands that to be, for various reasons. He's not an
11 attorney, other things that he may better explain to the Court.

12 So that brings us to these proceedings. I'm here. I'm
13 perfectly willing and available to be appointed -- my office is
14 the same -- should the Court see fit; but he's made it very
15 clear to me that he does not want counsel appointed.

16 THE COURT: All right. Thank you.

17 Mr. Shrout, you can remain seated. That's fine. Can you
18 hear me okay?

19 THE DEFENDANT: Yes, I can.

20 THE COURT: All right. You understand you have a
21 right to have a lawyer appointed to represent you. Do you know
22 that?

23 THE DEFENDANT: No, Your Honor, I don't.

24 THE COURT: Well, in a criminal case, you can have
25 appointed counsel if you can't afford counsel. If you can't

1 retain counsel -- in other words, if you can't pay for a
2 lawyer, the Court will appoint one to represent you in this
3 case.

4 Mr. Iniguez is a lawyer with the Federal Public Defender's
5 Office in this district. If you wanted him to represent you, I
6 would appoint him to represent you at no cost to you.

7 Do you want me to do that or --

8 THE DEFENDANT: I've spoken to this gentleman here.
9 He cannot represent me. However, if you want to appoint him as
10 standby counsel for purpose of procedure, I will accept that.

11 THE COURT: All right. I just want to be clear.
12 Whether it's Mr. Iniguez or another lawyer, either in the
13 Federal Public Defender's Office or a lawyer who is a member of
14 the CJA panel, are you telling me that you don't want the Court
15 to appoint any lawyer to represent you?

16 THE DEFENDANT: Yes, that's correct.

17 THE COURT: All right. Thank you for clarifying
18 that.

19 So, in light of that, Mr. Iniguez, I will appoint you as
20 standby counsel for Mr. Shrout in this matter.

21 MR. WEXLER: Your Honor, if I may?

22 THE COURT: Go ahead, Mr. Wexler.

23 MR. WEXLER: I believe it's only appropriate to
24 appoint Mr. Iniguez as standby counsel if the defendant is
25 choosing to represent himself. Mr. Iniguez mentions in his

1 remarks that it's his understanding the defendant does not
2 intend to represent himself. I would ask that the Court go
3 through a *Faretta* colloquy with the defendant to determine
4 whether or not the defendant has made an unequivocal waiver of
5 his right to counsel and intends to represent himself or is
6 simply just trying to proceed without any attorneys in -- for
7 his side, Your Honor.

8 THE COURT: Good point. Mr. Iniguez did make that
9 distinction.

10 So, Mr. Shrout, the other question I need to ask you about
11 is whether you intend to hire a lawyer to represent you in this
12 case.

13 THE DEFENDANT: Actually, once I'm (inaudible) my
14 intention is to plead guilty.

15 THE COURT: All right. Well, this is an arraignment
16 on the indictment. You're here to enter a plea. I'm going to
17 ask you if prior to coming to court today, after you had a
18 chance to review the indictment, you had the opportunity to
19 talk with a lawyer about the charges against you.

20 THE DEFENDANT: Actually, I never received a copy of
21 the indictment. I had to go to the clerk's office first thing
22 this morning to get one. They have not been supplied to me,
23 and I have not had a chance to review it.

24 THE COURT: Well, do you think you've had enough time
25 to review it now, or do you need more time to review it before

1 you decide what plea to enter?

2 THE DEFENDANT: Actually, my intention is to plead
3 guilty as soon as the prosecutor will read and certify the
4 charges for the record.

5 THE COURT: All right. Mr. Wexler, your thoughts
6 about that?

7 MR. WEXLER: Yes, Your Honor. If the defendant is
8 simply asking that the indictment be read in court, I would be
9 happy to do that. My concern is -- and I have some experience
10 handling cases of this variety -- is the defendant's use of the
11 word "certify." I believe that the defendant is relying on
12 ideology and rhetoric, namely aligned with the sovereign
13 citizen movement, and, in his use of the term "certify," is
14 asking for something more than a simple reading of the
15 indictment. But I would be happy to indulge the Court and the
16 defendant with a simple reading of the indictment if he is not
17 fully aware of what it contains.

18 THE COURT: I think what I'm going to do is this,
19 Mr. Shrout: This is your initial appearance on these charges.
20 Almost always the defendant receives appointed counsel if the
21 defendant wishes it. You've indicated you don't want me to
22 appoint counsel and don't intend to hire a lawyer to represent
23 you, so we've been through that.

24 Typically, as you've heard, because you were here during
25 at least some of the criminal calendar proceedings, I advise

1 defendants of their rights. I will tell you you have the right
2 to remain silent on the charges against you. You don't have to
3 talk to them about anyone if you choose to not do that, and you
4 have a right to know the charges that have been made against
5 you.

6 One of the other things we always do at these hearings is
7 we set the matter for further proceedings.

8 If it is your intention to enter a plea in the case with
9 respect to one or more of the counts in the indictment, my
10 inclination is to set this matter for either a plea hearing or
11 a status hearing before Judge Jones. Judge Jones is the judge
12 assigned to the case.

13 I think if you intend to enter a plea, as you've
14 indicated, it's probably better entered after you've had some
15 time to fully review the indictment and can do so before the
16 judge who is assigned to the case.

17 I can set the matter for -- I'll say a status conference.
18 That way you'll have a hearing date before Judge Jones. If he
19 has questions, he can ask you directly, and then he can decide
20 how best to proceed with respect to what you wish to do with
21 this case.

22 So, Mr. Wexler, that's what I'm going to do. Do you have
23 any objections to that?

24 MR. WEXLER: No objections to that, Your Honor.
25 Though I would ask that it be timely, as I'm sure the Court

1 intends, and there is the matter of the defendant's release
2 conditions pending that status conference.

3 THE COURT: Sure. Well, I think, to some extent, the
4 date I set for a hearing or a status hearing in this matter
5 will be affected by the release of the defendant.

6 Mr. Wexler, have you seen pretrial service's report?

7 MR. WEXLER: I have, Your Honor, as I'm not sure if
8 the Court has also reviewed it.

9 THE COURT: Yes, I have.

10 MR. WEXLER: It is short because there is no
11 information in the report really of any value. My
12 understanding is that the defendant was either not available or
13 not compliant with a pretrial interview.

14 I will note that I object to the ultimate conclusion of
15 the report, which is that the defendant be released on his own
16 recognizance, without conditions, subject to the providing of
17 an address. The government has strong concerns, not concerns
18 rising to the requirement of detention, but strong concerns
19 about the defendant's continued appearance in this case, and,
20 as a result, has fashioned a number of special conditions that
21 I went over with Mr. Nischik on the phone.

22 I also advised Mr. Iniguez briefly, before this matter
23 before you today, that we'd like the Court to institute to
24 ensure that the defendant appears at both the status conference
25 and future hearings in this case.

1 THE COURT: All right. Mr. Wexler, why don't you
2 tell me what those conditions are you have in mind.

3 MR. WEXLER: Yes, Your Honor. First, the government
4 would ask that the defendant be required to surrender his
5 passport. The defendant has worked extensively outside the
6 United States. He has worked in Canada, in Australia, in
7 England. He is scheduled to speak on a cruise called The
8 Conspira-Sea Cruise, as noted in the pretrial service's report,
9 which leaves out of Los Angeles on January 24, 2016. That
10 cruise makes several stops in Mexico.

11 And I would note that while Mr. Shrout has gone to other
12 countries to work, he's frequently gone there at the invitation
13 of like-minded individuals who also hold themselves out to be
14 sovereigns, and, if Mr. Shrout were to leave this country, he
15 would find safe haven among those communities. And so, as a
16 result, the government would first ask that Mr. Shrout
17 surrender his passport.

18 Second, Mr. Shrout maintains a residence, and his spouse
19 lives in the state of Utah. He also maintains a residence here
20 in Hillsboro, Oregon, and we would ask that Mr. Shrout's travel
21 be restricted to either the state of Utah or the state of
22 Oregon; that he be free to travel within those states but that
23 he could only travel to and from those two states and that he
24 would be required to check in and check out with pretrial
25 services as he moved from state to state.

1 I would note that this should not restrict Mr. Shrout's
2 ability to earn income. He gets a lot of his income through
3 internet payments. He earns his income through coaching
4 services that are done via email and on the phone and also does
5 a lot of seminars over the web, webinars, which he can do in
6 either location.

7 He actually has utilized facilities in Oregon before to
8 work, so being in Oregon should not restrict his employment
9 opportunities in any way.

10 Third, we'd ask that while on release that his income
11 sources be restricted to those that are reportable to the
12 Internal Revenue Service.

13 Mr. Shrout's been indicted for a willful failure to file,
14 failure to report his income to the IRS, and, absent the
15 reporting of his income by third parties, the United States has
16 no knowledge of whether or not Mr. Shrout continues to earn
17 income which could result in additional harm to the government.
18 So we would ask that any income sources be restricted to those
19 that are reportable.

20 I would note that all of his known income sources at this
21 time do report to the Internal Revenue Service, so it would not
22 require any change in his current employment.

23 And then, finally, Your Honor, I would note that
24 Mr. Shrout, since the indictment in this case, has submitted
25 several documents, both to the Department of Justice, as well

1 as the Internal Revenue Service, as well as the Court.

2 Indeed, immediately after the indictment, I was approached
3 outside of this courthouse with a document in which Mr. Shrout
4 alleged that he was not subject to the jurisdiction of this
5 court; that he was a sovereign entity protected by a UN
6 charter.

7 And, subsequent to being presented with that document, I
8 received via mail, as well as the agent -- investigating agent
9 in this case received via mail, a document styled a commercial
10 lien in which the defendant reiterated that he is not subject
11 to the jurisdiction of the federal government and assessed
12 penalties against myself, against Special Agent Hill. I will
13 also note that Your Honor has also been mentioned in that
14 document. Each individual mentioned, as well as acting U.S.
15 Attorney Mr. Williams, is liable, according to that document,
16 for \$1 trillion to Mr. Shrout.

17 In addition, after those -- those documents provided for
18 three days to comply. After three days, I received a
19 failure-to-comply notice and that the matter was going to be
20 forwarded to the appropriate international authorities.

21 Subsequent to that, I was made aware of a mailing that was
22 received by the Clerk of the Court here in which two documents
23 were provided. One had mentioned the Clerk of the Court, one
24 that mentioned Your Honor specifically, and which, again,
25 Mr. Shrout reiterated that he is not subject to the

1 jurisdiction of this Court.

2 All of this activity echoes activity that Mr. Shrout took
3 in a case -- a criminal case in the state of Utah in 2014 in
4 which he received a trial subpoena from the defense to appear
5 as a witness. He responded to that trial subpoena by writing a
6 letter to the Court, a handwritten letter to the Court, saying
7 that he was not going to appear, that he was a protected
8 sovereign, and that appearing would be a conflict of interest.
9 And, ultimately, he also did not appear in response to that
10 subpoena.

11 He also responded with a similar commercial lien document
12 in response to a search warrant that was executed on himself
13 and associated business premises. That warrant was executed in
14 2012. He responded in 2014 with a commercial lien, again
15 naming various prosecutors, members of the U.S. Attorney's
16 Office, as well as Judge Stewart, who signed that document.

17 All that is to say that those documents and the
18 defendant's assertions regarding jurisdiction give the
19 government, regardless of Mr. Shrout's presence here today,
20 concern that that presence will continue.

21 I would also ask the Court that the Court admonition the
22 defendant regarding these mailings. It's the government's
23 experience that these mailings are sort of entry documents into
24 a process that frequently results in the filing of actual liens
25 with various state entities, and that is a violation of Title

1 18 U.S.C. 1521.

2 So while it's customary to advise the defendant not to
3 violate any laws while on release, we would ask that the Court
4 specifically admonish the defendant to cease these mailings.

5 Now that this matter is underway, if the defendant has any
6 argument to make, the proper venue for that argument is through
7 the court filing system in the form of a pleading or a motion
8 and also specifically admonition the defendant that the filing
9 of false retaliatory liens is a federal crime under 18 U.S.C.
10 1521. It's 1521.

11 And that is all of the special conditions.

12 THE COURT: So, Mr. Wexler, the question for me to
13 decide under the Bail Reform Act is whether Mr. Shrout presents
14 a risk of danger to the community --

15 MR. WEXLER: Yes, Your Honor.

16 THE COURT: -- a risk of flight or both.

17 So the first thing I need to make sure I understand are
18 you proceeding -- are you seeking detention? Let's start with
19 basics.

20 MR. WEXLER: No, Your Honor, because we feel that
21 these conditions will assure --

22 THE COURT: So you want conditions?

23 MR. WEXLER: Yes, Your Honor.

24 THE COURT: So the conditions that are implemented in
25 any pretrial release order have to be such as to ensure that

1 the defendant, while on release, does not present a risk of
2 danger to the community or a risk of flight.

3 Is it the government's position that he is a risk of
4 flight or a risk of danger or both, such that one or more of
5 the conditions you've articulated need to be implemented?

6 MR. WEXLER: Yes, Your Honor. And I apologize if
7 I -- I may have spoken too fast at the beginning. We believe
8 that the defendant is a risk of flight, and we believe that the
9 defendant is a risk of economic harm --

10 THE COURT: Okay.

11 MR. WEXLER: -- but that these conditions would
12 ensure -- that would assuage the government's fears.

13 THE COURT: Let's talk about flight.

14 MR. WEXLER: Yes, Your Honor.

15 THE COURT: Mr. Shrout is here. He was not arrested.
16 He wasn't brought in by the marshals. He was here on a
17 summons. He showed up voluntarily. He's obviously been around
18 the courthouse based on your description of certain encounters
19 with him. You're aware of his involvement in another criminal
20 case, apparently, out of the District of Utah. He doesn't seem
21 to me and there's nothing in the record to suggest that he is
22 going to get on a boat or a plane or in some other form of
23 transportation and either try to flee this jurisdiction, the
24 country, or otherwise make himself unavailable.

25 In fact, certainly some, if not many of the activities

1 you've described, suggest that he intends to stick around so
2 that he can engage in some of the activities that you've
3 describe he's already begun in connection with these particular
4 charges.

5 The Bail Reform Act is pretty clear about the factors that
6 I have to consider. There isn't anything in the record showing
7 that he has a criminal record. There isn't anything in the
8 record that I have that shows that he -- well, it shows he has
9 ties to the community. You've already indicated that he
10 maintains a residence here in Oregon. He doesn't seem to have
11 any problems with respect to use of drugs or lack of financial
12 resources. He clearly has community ties. He's apparently
13 lived in Oregon for at least a sufficient amount of time to
14 maintain a residence here.

15 Now, let's just put aside the cruise to Mexico. Okay?
16 Let's put that aside, and we'll take that up separately. If
17 this were -- and, Mr. Wexler, tell me if I'm understanding the
18 nature of the charges. Are each of the counts in the
19 indictment misdemeanors, or are there any felonies involved?

20 MR. WEXLER: There all misdemeanors, Your Honor.

21 THE COURT: So if this were any other case and I had
22 the record before me that I had, on the flight issue, I would
23 release this defendant whether there would be conditions or
24 not; but given, frankly, the absence of any negative
25 indicators, under the Bail Reform Act, regarding risk of

1 flight, I don't think I would impose any conditions that would
2 ensure his continued appearance for proceedings in this matter.

3 I understand the arguments you've made. I'm not sure what
4 happened in the Utah case. What I do know is Mr. Shrout is
5 here now. He's apparently been around in connection with the
6 charges in this case, making certain filings or delivering
7 certain documents.

8 So the risk of flight -- again, the Mexico cruise aside --
9 I think doesn't exist.

10 So let's now talk about the cruise to Mexico and whether
11 that changes the -- the circumstances of the risk of flight.

12 Mr. Shrout, I have a question for you before I continue to
13 talk to Mr. Wexler. This cruise that you plan to go on
14 beginning January 24, when did you first make your reservations
15 or book the cruise?

16 THE DEFENDANT: Oh, probably -- I can't tell exactly,
17 but probably as long as three or four or five months ago.

18 THE COURT: Have you gone on similar cruises before?

19 THE DEFENDANT: No. I never have. It would be the
20 first time.

21 THE COURT: All right. Thank you.

22 So, Mr. Wexler, what we have is we have a long-scheduled
23 trip, apparently, scheduled prior to the time Mr. Shrout knew
24 anything about these charges. You indicated earlier that
25 he's -- I think it was you -- maybe it was Mr. Iniguez -- he's

1 gone to different countries. You indicated some concern that
2 he might find safe haven with other ideological colleagues in
3 those jurisdictions; but, apparently, because he's sitting
4 right here at counsel table, he always comes back from those
5 countries, and I -- you haven't told me anything that gives me
6 concern that if he were to go on this cruise he would not
7 return or that there is someone waiting somewhere along the
8 cruise route to give him safe harbor.

9 Do you have any other information that bears on that?

10 MR. WEXLER: Well, Your Honor, first, I would note
11 for the Court that -- that defendant's circumstances have
12 changed because, while it was a misdemeanor indictment, he is
13 under indictment now and facing the possibility of imprisonment
14 of up to a year in prison for each count, which could certainly
15 weigh on the defendant's state of mind at this time.

16 I will also specifically address the cruise note, and I
17 have documents that I would be happy to provide the Court for
18 review. I will note that the cruise has approximately two to
19 three dozen similarly minded speakers scheduled to appear on
20 the cruise, and so certainly the defendant would be within a
21 community just on the boat itself.

22 THE COURT: Okay. Hang on a minute. There had been
23 times in the past, in the eight years I've been on the bench,
24 I've been presented with search warrants and in some of those
25 instances the underlying rationale for the request to search is

1 based on the particular target's association with people of
2 specific ideological groups.

3 If Mr. Shrout were a Democrat or a Republican going to a
4 Democrat or a Republican convention, I'm not sure that would be
5 much different than getting on a boat with a bunch of other
6 folks who have the same ideas that he does about various rights
7 and freedoms.

8 Apart from whether I may agree or not with any of those
9 ideas, what you're asking me to do is impose a condition, based
10 on the risk of flight, essentially because he might hang out
11 with people who think the same things that he does, and, in
12 some way you have not yet made clear to me, that might
13 ultimately persuade him to never come back to this country.

14 I'm not sure I understand how the connection is made.

15 MR. WEXLER: Your Honor, I'm not trying to say that
16 simply by being on the cruise he will be persuaded to not come
17 back to this country. What I'm saying is that the
18 circumstances the defendant now finds him under will persuade
19 him to not come back to this country and that the cruise
20 provides him an opportunity to do that.

21 THE COURT: Sure. He -- was he under indictment in
22 this Utah case?

23 MR. WEXLER: No, Your Honor. He was subpoenaed as a
24 witness in that case.

25 THE DEFENDANT: Your Honor, that's not correct. I

1 was never subpoenaed in any case to be a witness to anything.

2 THE COURT: Okay. All right. Thank you.

3 MR. INIGUEZ: Judge, if I could only say a few
4 things. It's a cruise. It's a seven-day cruise. He goes to
5 Mexico and comes back. You're right. He's had those plans for
6 some time. Maybe it doesn't sound like a lot of money to some
7 folks, but a couple thousand dollars he would lose for that.
8 There's no indication that he would flee, and I think he will
9 tell the Court, if you ask him -- he will give you his
10 assurance he has every intention to appear for all proceedings
11 related to this matter. I think we can take his word.
12 67 years old. There's nothing in the record to suggest that
13 he's going to flee. He's never fled, so --

14 THE COURT: Mr. Shrout, if you get on that boat and
15 you take your seven-day cruise around Mexico, are you coming
16 back here?

17 THE DEFENDANT: I promise to come back and make an
18 appearance any time you have a hearing.

19 THE COURT: Mr. Wexler, I think, given what I've
20 heard so far, your description of charges and the rationale
21 underlying the conduct upon which the charges are based, it
22 seems pretty clear to me that Mr. Shrout has every intention of
23 coming back and continuing to engage with you in this case.

24 I don't get any sense from anything I've seen either in
25 the record or what I've heard here in court today that he's not

1 going to come back if he goes on this cruise. I don't think
2 he's a risk of flight. I think he will come back. In fact, I
3 think he's looking forward to coming back, from what I can
4 tell, and I don't believe he's a risk of flight even if he goes
5 on this cruise to Mexico.

6 On the issue of economic harm, let me tell you what I'm
7 thinking about that, and then you can respond specifically.

8 If I release him on his own recognizance, as with any
9 other defendant, as with Mr. Proudfoot, who was previously --
10 who was the case just before Mr. Shrout, that doesn't relieve a
11 defendant from the obligation to abide by all laws.

12 So if he were engaging in forms of non-reportable income,
13 that would, as you pointed out, be a violation of law. I'm not
14 sure I need to have a written condition that tells him exactly
15 that. It's already what he's required to do, and it could
16 affect his pretrial release status.

17 I want to make sure I don't misunderstand the argument
18 you've made. I don't -- I don't think I heard anything to
19 suggest that right now the government has a concern that
20 Mr. Shrout is engaging in activities which may be the basis of
21 additional misdemeanor charges or other crimes that might be
22 brought by the government.

23 Am I right about that, or did I misunderstand?

24 MR. WEXLER: I think that perhaps goes a little bit
25 too far --

1 THE COURT: Okay.

2 MR. WEXLER: -- from what I was saying, Your Honor.

3 THE COURT: Okay.

4 MR. WEXLER: And I can clarify and say that the
5 special conditions I had outlined were largely focused on the
6 risk of flight.

7 THE COURT: Yes.

8 MR. WEXLER: And speaking to the potential for
9 economic harm, I think it's sufficient that the Court simply
10 admonition the defendant regarding the compliance with laws;
11 but I would also ask that the Court specifically address the
12 criminal act codified under 18 U.S.C. 1521 of filing false
13 liens. I believe that the defendant's actions in regard to
14 these letters, in which the letters are styled as commercial
15 liens -- and I have them all here if the Court would like to
16 review them --

17 THE COURT: I've -- I've seen similar documents.
18 Thank you.

19 MR. WEXLER: -- are an indication of that type of
20 activity, and so a specific admonishment is called for.

21 THE COURT: All right. Thank you.

22 All right. Mr. Shrout, I'm going to follow the
23 recommendation of the pretrial services officer. I'll release
24 you on your own recognizance. You were here as I talked to
25 Mr. Proudfoot about what that means, but I'll go through it

1 again just to make sure that it's clear on the record in this
2 case.

3 What it means is there are no specific conditions for your
4 pretrial release except that you have to make all your court
5 appearances and make sure you respond to whatever requests or
6 orders or scheduling events that the Court has for your case
7 and you have to obey all the laws -- local, state, and federal.
8 There are a lot of laws out there -- local, state, and
9 federal -- as you probably are aware. Mr. Wexler has brought
10 to the fore one or two of those that he has particular concerns
11 about.

12 As a judge, I can't give you legal advice, and I'm not
13 purporting to do that. I will just tell you this: While
14 you're on pretrial release and while your case is pending, you
15 have to obey all the laws -- local, state and federal. If the
16 government charges you with violating any law -- local, state,
17 or federal -- and they establish the violation to a sufficient
18 probability, at least some of the things that could happen is
19 your pretrial release could be revoked or conditions could be
20 imposed; whereas, now you don't have any conditions pending
21 that govern your release except to obey the laws; or the
22 government, if it believes it has sufficient basis to do so,
23 could use any of those behaviors or conducts as the basis for
24 additional charges against you.

25 So I'm just telling you that because that comes under the

1 umbrella of obeying all the laws -- local, state, and
2 federal -- while you're out there. That's pretty much it.

3 Do you have any questions about that?

4 THE DEFENDANT: Not about that, but I have another
5 request.

6 THE COURT: Go ahead.

7 THE DEFENDANT: I request an appearance bond at no
8 cost to myself.

9 THE COURT: That is not a condition of your -- of
10 your release. Release on your own recognizance means all you
11 have to do is make sure you make your court appearances, so
12 there is no appearance bond required.

13 THE DEFENDANT: Okay.

14 THE COURT: All right. The only other thing I need
15 to do is set a date for the next hearing before Judge Jones to
16 make sure that the matter moves along.

17 Here is what I'm going to do at this time: As I think the
18 lawyers know, I don't have access to the district judge's
19 calendars, except for purposes of setting supervised release
20 violation hearings. So what I'm going to do is set a status
21 conference before Judge Jones on one of the two days of the
22 week. Wednesday or Thursday he typically hears supervised
23 release violations.

24 Now, Mr. Shrout, as I understand it, you leave on the 24th;
25 correct?

1 THE DEFENDANT: I don't recall. It's either the 22nd
2 or the 24th. I think it's actually the 22nd. Is that a
3 Sunday?

4 THE COURT: The 22nd is a Friday. The 24th is a
5 Sunday.

6 THE DEFENDANT: Okay. It would be the 24th. It
7 leaves on a Sunday.

8 THE COURT: Today is the 7th.

9 THE DEFENDANT: It leaves from California, by the
10 way.

11 THE COURT: When are you leaving for California?

12 THE DEFENDANT: I'm not quite sure if I'm going --
13 well, I'm not sure about my means of transportation, so it
14 would be probably a couple of days before that at least.

15 THE COURT: So let me ask you this question: If I
16 set the matter for a status hearing before Judge Jones on
17 Wednesday the 20th, could you appear?

18 MR. INIGUEZ: I think the preference, Your Honor,
19 would be to do it once he returns. And if I'm going to be
20 here, I'm going to be gone that day, the 20th.

21 THE COURT: What about Wednesday the 3rd of February?

22 MR. INIGUEZ: That would -- that would work.

23 THE COURT: Mr. Shrout?

24 All right. Mr. Shrout has indicated he can appear before
25 Judge Jones on Wednesday, February 3rd, at 9:30 a.m.

1 Judge Jones's courtroom is in this building on the 10th
2 floor, and that will be the time for the next hearing in the
3 case. I'm going to set it as a status hearing and then all
4 matters the parties wish to address to Judge Jones at that time
5 regarding the case and further proceedings can be taken up.

6 So Wednesday, February 3, 2016, at 9:30, before
7 Judge Jones.

8 All right.

9 MR. WEXLER: Your Honor?

10 THE COURT: Yes, Mr. Wexler.

11 MR. WEXLER: If I may, I would just like to note for
12 the record that there's been no plea entered in this case as
13 of -- I don't think that --

14 THE COURT: Sure.

15 MR. WEXLER: -- Mr. Iniguez entered a plea of not
16 guilty on Mr. Shrout's behalf. And I know it's customary in
17 this jurisdiction to order discovery within 14 days. However,
18 I don't know that that's appropriate --

19 THE COURT: Yes, I --

20 MR. WEXLER: -- given that hearing is occurring after
21 the 14-day time period.

22 THE COURT: I -- I agree. So --

23 THE DEFENDANT: I'm not understanding what he just
24 said.

25 THE COURT: Let me see if I can be clear about it.

1 MR. WEXLER: Okay.

2 THE COURT: There are two things we always do at
3 these initial appearances, Mr. Shrout, that we haven't really
4 done yet. One is I haven't ordered the parties -- the
5 government to give discovery, the parties to exchange
6 information, within the 14-day time period. Mr. Wexler thinks
7 that's probably not workable in this particular case until at
8 least we have the status hearing on February 3rd. I think he's
9 right. So at this time, unless you have concerns, I will not
10 order the government to produce discovery within 14 days.

11 THE DEFENDANT: Oh, I don't need discovery.

12 THE COURT: Okay. So any further issues about
13 discovery you can take up with Judge Jones on February 3rd.

14 THE DEFENDANT: Sure.

15 THE COURT: The second thing, I know what you told me
16 earlier about entering a plea. Here is what I think the best
17 thing would be to do -- and, Mr. Iniguez, I am interested to
18 hear from you, and, Mr. Wexler, from you. We can do one of two
19 things. Mr. Shrout, we can enter a not guilty plea until you
20 see Judge Jones on the 3rd, or we can defer your entry of a
21 plea --

22 THE DEFENDANT: I'm going to enter.

23 THE COURT: -- until you see Judge Jones on the 3rd.

24 I'm sorry?

25 THE DEFENDANT: Okay. I'm sorry. Go ahead.

1 THE COURT: Or we can defer your entry of a plea
2 until you see Judge Jones, because this is his case, on
3 February 3rd.

4 What do you think about that?

5 THE DEFENDANT: I think that would be the best idea.

6 THE COURT: Mr. Wexler, any concerns about deferring
7 the defendant's entry of a plea in a case until February 3rd?

8 MR. WEXLER: I can't think of any, Your Honor, so I
9 would be fine with that.

10 THE COURT: All right. So we'll defer the entry of a
11 plea on the defendant's behalf until the matter is before
12 Judge Jones on February 3rd. I think that takes care of
13 everything.

14 Mr. Shrout, do you have any other questions?

15 THE DEFENDANT: Not at this time.

16 THE COURT: All right. Thank you.

17 Mr. Wexler, thank you.

18 MR. WEXLER: Thank you.

19 MR. INIGUEZ: Thank you, Judge.

20 THE COURT: Oh, Mr. Shrout, I have an order that says
21 you can go on your own recognizance, and I need you to sign
22 that before you leave today. So I'll sign it, and then you can
23 sign it.

24 MR. WEXLER: You Honor, can I reopen the matter just
25 briefly?

1 THE COURT: Go ahead, Mr. Nischik.

2 PRETRIAL SERVICES OFFICER: Your Honor, I was just
3 going to mention that the defendant will need to be processed
4 by the marshals service.

5 THE COURT: Because of the summons?

6 PRETRIAL SERVICES OFFICER: Because of the summons.

7 THE COURT: That's right. I forgot about that.

8 Before I talk to Mr. Shrout again, Mr. Wexler, go ahead.

9 MR. WEXLER: Just, Your Honor, there was a request in
10 the pretrial report that as a condition of the defendant being
11 released on his own recognizance that he provide an address of
12 contact information.

13 THE COURT: Right.

14 MR. WEXLER: I just would like the Court to reiterate
15 that requirement.

16 THE COURT: Right. So, Mr. Shrout, I'm sorry. There
17 are two other things.

18 THE DEFENDANT: Okay.

19 THE COURT: The first thing is I need you to give
20 some contact information to pretrial services so we know where
21 to send things and let you know when hearings are happening.
22 Typically, that's an address, a phone number, and an email
23 address. That's what people typically provide.

24 THE DEFENDANT: So you can actually email, though,
25 instead of hard mailing them?

1 THE COURT: Not necessarily.

2 THE DEFENDANT: That would be the easiest.

3 THE COURT: For email service?

4 THE DEFENDANT: Sure.

5 THE COURT: Well, all right. If you just provide
6 your address, phone number, and email address to Mr. Nischik,
7 then we'll get that into the record, and things can be sent to
8 you.

9 THE DEFENDANT: Like I said, I mean, up until today,
10 until I came to the clerk's office to get a copy of the
11 indictment, I never had any receipt of that, you know, on email
12 or hard mail.

13 THE COURT: Our practice here is typically when a
14 party does not have a lawyer of record in a case, the clerk's
15 office mails things to the address. That's their practice.
16 They really don't have the capacity to email. Lawyers do and
17 sometimes they exchange documents that way, but the clerk's
18 office really doesn't have the capacity to do that, so they
19 mail hard copies to your physical address. Is that okay?

20 THE DEFENDANT: Of course it is. They sent the
21 summons to that address.

22 THE COURT: Okay. Good. So we'll get your most
23 recent address, phone number, with -- with Mr. Nischik, before
24 you leave.

25 I have the order here as well.

1 Mr. Wexler, you raised a point, and I think I forgot it
2 already.

3 MR. WEXLER: I -- I think that was my point,
4 Your Honor; just that the pretrial had asked for that address
5 in order for him to be released.

6 THE COURT: Mr. Nischik, what was your point? Was
7 that the same thing, or was it different?

8 PRETRIAL SERVICES OFFICER: The marshals.

9 MR. WEXLER: The marshals.

10 THE COURT: Oh, right. Mr. Shrout, because there was
11 a summons issued, the marshals service has to process you so
12 that the summons is satisfied and all the --

13 THE DEFENDANT: What does that entail?

14 THE COURT: Not much. It doesn't mean you're going
15 to be detained or anything. There's just some paperwork to
16 fill out. It shouldn't take you too long.

17 Mr. Iniguez can talk to you about that and what's
18 involved.

19 THE DEFENDANT: Okay.

20 THE COURT: I'm sure it won't take very much time.

21 All right. Mr. Gale, would you hand this to Mr. Shrout,
22 please.

23 Thank you.

24 THE DEFENDANT: Do I get a copy of this?

25 MR. INIGUEZ: Yes, you will.

THE COURT: Thank you. We're adjourned.

(FTR-recorded hearing concluded.)

C E R T I F I C A T E

United States of America v. Winston Shrout

3:15-cr-00438-JO-1

FIRST APPEARANCE

January 7, 2016

I certify, by signing below, that the foregoing is a true and correct transcript of the FTR-recorded hearing, taken by stenographic means, via FTR recording, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 9/22/16
CSR Expiration Date: 3/31/17